

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
AND FOR LEON COUNTY, FLORIDA

STEPHEN S. DOBSON, III, P.A.,  
a Florida Professional Association,

Plaintiff,

vs.

CASE NO: 03-CA-1430

LEON COUNTY, FLORIDA, a  
political subdivision of the  
State of Florida,

Defendant.

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ORDER ON PLAINTIFF'S AND LEON COUNTY'S  
MOTIONS FOR SUMMARY JUDGMENT

Plaintiff's Motion for Partial Summary Judgment, filed on or about January 12, 2005, and Leon County's Motion for Final Summary Judgment, filed on or about January 5, 2005, were heard by this Court on March 7, 2005. The Court has examined the entire record in this cause and hearing argument from counsel based on the undisputed material facts and the remaining issues of law. It is hereby ORDERED and ADJUDGED that:

1. Plaintiff, Stephen Dobson, pursuant to an assignment for collection purposes from Former Leon County Commissioner Rudy Maloy, seeks partial summary judgement as to Leon County's liability for reimbursement of attorney's fees Maloy incurred for the successful defense of criminal charges

while Maloy was a Leon County Commissioner pursuant to Florida common law and Leon County Policies No. 93-50 and 03-02. Plaintiff also requests summary judgment as to Leon County's liability for fees Plaintiff (and thus Maloy) has incurred in litigating entitlement to fees. Leon County requests final summary judgment on all of Plaintiff's claims based upon sovereign immunity and other grounds.

2. The following facts are not disputed:

(a) Rudolph Maloy during all relevant periods was a Leon County Commissioner and was employed by the Florida Department of Transportation from November, 1980 until October, 2001.

(b) As a member of the Board of County Commissioners (BCC), Maloy was active in the Florida Association of Counties (FAC) and the National Association of Counties (NACo). At the times of the trips described below, Maloy was president of FAC. Leon County is a member of both FAC and NACo, having budgeted for and paid dues annually. Budgeting and paying dues to FAC and NACo is a proper public purpose. To that end, the BCC encouraged Maloy's participation in FAC and NACo. Participation in both organizations is a proper public purpose and arises out of or is in connection with the performance of a commissioner's duties.

(c) On June 23, 1998, and November 16, 1999, the BCC issued resolutions praising Maloy for achieving the presidency of FAC and seeking the second vice presidency of NACo. Both resolutions found that Maloy's service as president of FAC and second vice president of NACo had been and would be of benefit to Leon County and in the county's best interest. At the County's urging,

Maloy sought and served as an officer, director and president of FAC and was active in NACo. In fact, Maloy remained on FAC's board of directors along with another Leon County Commissioner until his service as a Leon County Commissioner ended late in 2004. To be a member of FAC or NACo's board of directors, or the president of FAC, it was required that Maloy be a duly elected county commissioner. Maloy's activities in FAC, as president and a director, arise out of or were in connection with his duties as a commissioner. Leon County offered no evidence that Maloy's participation in either FAC or NACo did not arise out of or was not in connection with his service and performance as a county commissioner.

(d) Serving as president, vice president, and executive board member of FAC and participating as a Leon County Commissioner in NACo, required Maloy to travel outside Leon County. Historically, Leon County has provided extra money in the travel budget for commissioners who serve on the board of directors of FAC. Leon County provided an extra \$3,000 per fiscal year in the expense budget of Maloy (and also County Commissioner Thael) to have available for travel reimbursements and expenses relating to FAC and NACo. Additionally, Leon County also budgets for and reimburses other commissioners and county employees for travels to NACo and FAC conferences. Expenditure of these funds, including the dues paid for membership in FAC and NACo, is a proper public purpose.

(e) In February 2001, the Board initiated an investigation into allegations of sexual harassment against Maloy as to certain county employees, requesting that the State of Florida (Governor) cause the Florida Department of Law Enforcement ("FDLE") to review such alleged activities

of Maloy while serving as a member of the Board. Because he was going to be investigated by FDLE, Maloy orally retained Stephen S. Dobson's law firm to represent him. The FDLE report found no criminal wrongdoing with regards to the allegations of sexual harassment, however the report contained allegations of misconduct with regards to travel reimbursements. (Maloy was subsequently cleared of alleged ethical violations relating to sexual harassment charges by a Florida administrative law judge of the Florida Ethics Commission).

(f) As a result of the investigation, the State Attorney of the Second Judicial Circuit in and for Leon County, on May 30, 2001, filed criminal charges by Information against Maloy charging him with eight counts of travel related criminal offenses. The charges involved five trips. Two of the five trips partially involved business for DOT. Those two DOT trips also involved either FAC, NACo, or Leon County business. As such, all counts in the criminal complaint involved travel for Leon County or FAC or both and alleged duplicative travel reimbursements from FAC, Leon County and/or DOT. Leon County has no knowledge, direct or indirect, that would cause any of the five trips to be trips that would not serve a public purpose and therefore not proper for reimbursement. As long as Maloy attended the meetings and conferences during the day, the trips served a public purpose. No one from the county asserts that Mr. Maloy did not make the trips.

(g) Dobson's law firm also agreed to represent Maloy in connection with the criminal charges in addition to its previous representation during the investigatory phase. Maloy initially agreed to pay Dobson by the hour, but ultimately paid Dobson a \$50,000 retainer and agreed to pay all

other charges for legal fees and costs not covered by the retainer. Dobson charged Maloy a rate of \$300 per hour and lesser rates for others in his law firm.

(h) Dobson represented Maloy and obtained the dismissal of seven of the eight counts of the original Information. In the State's appeal of the dismissal, Dobson represented Maloy and secured an affirmation of the lower court's dismissal. Thereafter, the State Attorney filed an Amended Information, which contained three new misdemeanor counts and a misdemeanor count that remained pending from the original Information. On December 5, 2002, a judgment of acquittal was entered after the jury found Maloy not guilty as to all charges.

(i) Pursuant to the Board of County Commissioners Policy No. 93-50 and the laws of Florida, Maloy and Plaintiff applied to the County Attorney for reimbursement of his legal fees and expenses from the County on December 20, 2002. Policy No. 93-50 set forth the written policy and procedure for members of the Board to obtain reimbursement for legal expenses and costs incurred in defending civil and criminal litigation. County Attorney Thiele ("Thiele") advised Plaintiff and Maloy that the request was being processed in accordance with Policy No. 93-50.

(j) Two days later, Thiele submitted an Agenda Request to change Policy No. 93-50 to be heard on January 14, 2003. At that time, Policy No. 03-02 was adopted. The purpose and scope of the policy remained unchanged except the new policy removed Thiele's authority under Policy 93-50 to determine which requests would fall within the policy and thus be entitled to reimbursement. The new policy vested that authority solely in the County Commission.

(k) On May 20, 2003, the Board considered Maloy's application for reimbursement under Policy No. 03-02. At that meeting, Thiele advised the Board that Maloy's request for reimbursement at least in part fell within county policy and Florida law. Thiele informed the Board that Maloy's travel to seminars, conferences, and meetings of and for the Florida Association of Counties arose out of or were connected to Maloy's official duties and served a public purpose. The Board denied the application for reimbursement. Leon County, in its deposition, has admitted through witnesses it produced that having been acquitted of the charges against him, Maloy is entitled to have at the very least, a portion of his fees reimbursed by Leon County.<sup>1</sup>

(l) On June 6, 2003, Maloy assigned his right to reimbursement to Dobson for collection purposes. Maloy remains indebted to Dobson for all fees for the defense of the criminal matter not previously paid and to the extent Plaintiff does not recover fees in this case for having to litigate the issue of entitlement, Maloy remains liable to Dobson for such deficit.

3. Plaintiff contends, in part, that he (Maloy) is entitled to reimbursement of attorney's fees from Leon County based on Florida common law, as enumerated in *Thorner v. City of Fort Walton Beach*, 568 So. 2d 914 (Fla. 1990). Leon county contends that such claim is barred by the doctrine of

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<sup>1</sup> Up to the time of Mr. Maloy's request and after the time of Maloy's request for reimbursement, numerous requests that had been presented to the County had been paid (except for one which was withdrawn by the Commissioner seeking reimbursement). None had ever been denied. At least one of the payments and/or reimbursement was for a criminal case. Sometimes, reimbursements were made to the applying commissioner and sometimes the payments were made direct to the attorney who had represented the commissioner.

sovereign immunity. The Court has reviewed the briefs of both parties and found no cases directly on point on the issue of sovereign immunity. The Court concludes, however, that Plaintiff's common law claim is barred by sovereign immunity. Therefore, Plaintiff's Motion for Partial Summary Judgment for liability based on Florida common law is denied.

4. The Court also considered arguments that Leon County Policies Nos. 93-50 and 03-02 allow for a private right of action that is not barred by sovereign immunity. The Leon County policies, which were adopted to protect elected officials, are based on Florida statutory and common law and create a right of action for the commissioner. Leon County claims that, as with Plaintiff's common law claim, a claim under Leon County Policies for reimbursement of attorney's fees is barred by sovereign immunity. The Court finds that the policies, along with the Leon County Commission's continuing use of the policies to reimburse Leon County elected commissioners for attorney's fees together with Maloy and Dobson's written application for reimbursement under such policies which was processed by the County constitutes a contract of indemnity. Under the rationale of *Waite Development v. City of Milton*, 866 So. 2d 153 (Fla. 1<sup>st</sup> DCA 2004) and *Pan Am Tobacco Corp. v. Dept. of Corrections*, 471 So. 2d 4 (Fla. 1984), the doctrine of sovereign immunity does not bar such claim. Therefore, Partial Summary Judgment is entered in favor of Plaintiff as to Leon County's liability for reimbursement of attorney's fees incurred by Maloy in defense of the underlying criminal cases.

5. Plaintiff also seeks recovery of attorney's fees incurred in litigating his entitlement to fees. Plaintiff claims that Rudy Maloy's entitlement to fees incurred during the underlying criminal

litigation would be rendered meaningless if Maloy had to incur costs and fees to prove entitlement to those fees. Further, Plaintiff argues that if fees incurred to litigate entitlement are not awarded, then Rudy Maloy would not be fully indemnified because Maloy would continue to be indebted to the Plaintiff to the extent of the attorney's fees Plaintiff incurs in the instant litigation. However, the Court concludes that Plaintiff is not entitled to recover fees incurred to litigate his entitlement to fees under an indemnity contract and enters summary judgment against Plaintiff as to Leon County's liability for such fees. *See American and Foreign Ins. Co. v. Avis Rent-A-Car System, Inc.*, 401 So. 2d 855 (Fla. 1<sup>st</sup> DCA 1981).

6. The only remaining issue for trial is determination of the dollar amount of attorney's fees that Plaintiff is entitled to recover from Leon County. This Court reserves jurisdiction to determine the amount of such recovery or such other matters as the Court determines to be meet and just.

DONE AND ORDERED this 14<sup>th</sup> day of April, 2005.



MICHAEL D. MILLER  
Circuit Judge

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